

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING
DECEMBER 8, 2004**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, December 8, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Walter Tarmann
Walter Schmidt
Ray Dwyer

BOARD MEMBERS ABSENT: Paul Schultz

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: David Kalusche, BA04:079, petitioner
Tim Kaucic, BA04:088, petitioner
Julie Sullivan, RSV Engineering, BA04:088
Gary Goodchild, Ottawa Town Supervisor, BA04:089
Charlotte Miller, BA04:092, petitioner
Todd Bohnsack, BA04:092, design counsel and nephew of
the petitioner
Dennis Kukla, BA04:092, neighbor
Joseph George, BA04:092, neighbor
Jo Ann Koch, BA04:093, petitioner
David Koch, BA04:093, son of the petitioner
Kevin and Jane Kasper, BA04:093, neighbors
Rick Russart, BA04:006, Okauchee Lions Club, petitioner
Danny Schick, BA04:006, Eagle Scout candidate proposing
to build dugouts for the Okauchee Lions Club
Sandy Schick, BA04:006, mother of Danny Schick
Spencer Hicks, BA04:006, Scoutmaster

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of November 10, 2004.*

The motion was seconded by Mr. Tarmann and carried with four yes votes. Mr. Dwyer abstained because he was not present at the meeting of November 10, 2004.

NEW BUSINESS:

BA04:079 DAVID KALUSCHE - Petitioner

TROY ALEXANDER - Owner - (Held in abeyance from November 10, 2004)

Mr. Tarmann

I move to hold this hearing in abeyance until January 12, 2005, per the petitioner's request and the staff's recommendation.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was to hold the matter in abeyance until January 12, 2005.

BA04:088 TIM KAUCIC

Note: The petitioner's request included an appeal to a determination by the Planning and Zoning Division staff that only Town assessment records and not appraisals will be used to determine the fair market value of a structure for the purpose of determining compliance with the provision of the Waukesha County Shoreland and Floodland Protection Ordinance that a non-conforming structure cannot be remodeled or expanded if the cost of that remodeling and expansion exceeds 50% of its fair market value. The petitioner withdrew that portion of his request at the Pubic Hearing. Therefore, the Board took no action on that portion of the request.

Mr. Schmidt

I make a motion to approve the request in accordance with the staff's recommendation, subject to the conditions set forth in the staff Report and for the reasons set forth in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of the request for a floor area ratio variance and denial of the request for a special exception from the accessory building floor area ratio requirement, but approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the offset and road setback requirements to permit the petitioner to remodel and expand the residence, raise the residence and convert a crawl space to a basement, and add an attached garage, with the following conditions:

1. A "preliminary site evaluation" of the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a zoning permit, evidence must be submitted to the Planning and Zoning Division staff that the existing septic system is operating properly, that the Environmental Health Division has no objection to the proposed changes to the residence or the proposed relocation of the detached garage, and that the remodeled residence and relocated detached garage will meet all required minimum separation distances and will not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a sanitary permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a zoning permit.
2. The existing 8.3 ft. x 12.2 ft. shed must be removed from the property, prior to the issuance of a zoning permit.

3. The detached garage, which according to the Plat of Survey submitted with this request is 22.3 ft. x 26.3 ft. with a 6 ft. x 8.3 ft. extension, may be relocated, but it cannot be increased in size.
4. The total floor area, including the first floor of the residence, the attached garage, and the detached garage, shall not exceed 3,508 sq. ft., resulting in a conforming floor area ratio of no more than 15%.
5. The detached garage must be moved to a location at least 11.6 ft. from the side lot line and at least 40 ft. from the edge of the platted road right-of-way, as measured to the outer edges of the walls.
6. Prior to the issuance of a zoning permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed expanded residence and the relocated detached garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. No retaining walls will be permitted within 75 ft. of the lake or within 5 ft. of the side lot lines.
8. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the proposed changes do not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of a floor area ratio variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would not be unnecessarily burdensome to comply with the maximum permitted floor area ratio of 15%, which would permit a total floor area of 3,508 sq. ft.

Relocating the existing detached garage without any expansion, as recommended, will still provide a sufficient amount of garage space, since the remodeled residence will also have a two-car attached garage. It would not be in conformance with the purpose and intent of the Ordinance to permit the detached garage to be expanded. Therefore, although the requested special exception from the maximum permitted accessory building floor area ratio of 3% of the lot area does not require a demonstration that denial would result in an unnecessary hardship, it is felt that the adjacent properties and the public interest and welfare are best served by not varying the accessory building floor area ratio requirement.

Granting variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the offset requirement will allow the remodeled residence to utilize the existing foundation, thus minimizing the amount of land disturbance. Although the existing residence is close to the north lot line, the residence is in conformance with the shore setback and road setback requirements and the existing offset between the residence and the north lot line provides adequate space for maintenance of the residence. Further, the existing offset will not be decreased by the proposed remodeling and the separation distance between the existing residence and the adjacent residence to the north is more than 80 ft. Relocating the detached garage, as recommended, at least 40 ft. from the edge of the platted road right-of-way, will place the garage in line with the detached garage on the adjacent lot to the south and will not interfere with the public's use of the road or result in a safety hazard. Therefore, the approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the offset requirement to permit the proposed changes to the residence and the approval of a road setback variance to permit the detached garage to be relocated, with the recommended conditions, are in conformance with the purpose and intent of the Ordinance.

BA04:089 TOWN OF OTTAWA

Mr. Dwyer

I move to approve the request, subject to the recommended conditions set forth by the staff in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The sign must be located so that no portion, including the support posts, extends into the 100 ft. wide ultimate (established) road right-of-way of Hwy 67.
2. In order to ensure conformance with the above condition, the sign location must be staked in the field by a registered land surveyor. Prior to the issuance of a zoning permit for the sign, certification from that registered land surveyor that the sign location is outside of the 100 ft. wide ultimate (established) road right-of-way of Hwy 67 must be submitted to the Planning and Zoning Division staff.
3. An updated Site Plan/Plan of Operation for the Ottawa Town Hall, authorizing the installation of the proposed sign, must be approved by the Planning and Zoning Division staff and the Ottawa Town Planning Commission, prior to the issuance of a zoning permit for the sign.
4. The existing sign for the Town of Ottawa Recycling Center must be removed upon installation of the proposed sign

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a free-standing sign that will adequately identify the Ottawa Town Hall to be installed in a visible location outside of the ultimate (established) road right-of-way of Hwy 67. As recommended the proposed sign will not be a safety hazard and is not contrary to the public interest, whereas a sign located farther

from the road could be difficult to see and could pose a safety hazard to motorists. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:092 CHARLOTTE MILLER - Petitioner
GARY AND ELISABETH WELSH - Owners

Mr. Bartholomew *I make a motion to approve the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried with three yes votes. Mr. Schmidt voted no and Mr. Ward abstained.

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence and attached garage must be located at least 10 ft. from the edge of the paved roadway, as measured to the outer edge of the wall, with an overhang not to exceed 2 ft. in width.
2. The proposed residence and attached garage must be located at least 7 ft. from the side lot lines, as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width. Any stairs or walkways along the sides of the residence must be located at least 3 ft. from the side lot lines.
3. The total floor area of the residence, the attached garage, and any proposed storage sheds, must not exceed 2,400 sq. ft. All levels of the residence, except the lowest level (basement), must be included in the floor area calculation. On the upper floor of the residence, only those areas with a ceiling height of 6 ft. or greater should be included as floor area. Any area above the garage (bonus room) must also be included as floor area if it is directly accessible from the residence or via a permanent staircase from the garage. Storage space above the garage that is accessible only via pull-down stairs from the garage shall not be included as floor area. This will result in a floor area ratio of 24.8%.
4. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, a Plat of Survey showing the staked-out location of the proposed residence and attached garage, as well as any proposed storage shed, decks, patios, or retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The existing covered concrete block basement must be removed and the area restored, with the elimination of as much of the existing retaining walls, located on either side of the covered concrete block basement, as possible without compromising that portion of the retaining wall that extends onto the adjacent property to the north.

7. A Restoration Plan for the area now occupied by the covered concrete block basement, showing the proposed finished grades and how the existing retaining walls will be re-configured, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This restoration plan may be combined with the Plat of Survey required in Condition No. 5.
8. New retaining walls will only be permitted within 75 ft. of the lake if they are determined by the Planning and Zoning Division staff to be necessary for erosion and sediment control.
9. Any new retaining walls within 5 ft. of the side lot lines must be approved by the Town of Eagle Planning Commission and the Waukesha County Park and Planning Commission.
10. New retaining walls may not be more than 4 ft. in height, unless they are certified by a structural engineer.
11. If desired, a storage shed may be constructed to replace the covered concrete block basement, but the storage shed must be located in a conforming location and its floor area must be included in the total floor area calculation.
12. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, and the location of all proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 5 and/or the Restoration Plan required in Condition No. 7.
13. Prior to the issuance of a zoning permit, a sanitary permit for new waste disposal system must be issued by the Environmental Health Division, and a copy of that sanitary permit must be furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The granting of variances requires the demonstration of a hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Further, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. Hardships exist due to the size of the lot, the width of the lot, and the steep slope on the lot. Conformance with the maximum permitted floor area ratio of 15% would permit a total floor area of only 1,450 sq. ft., which is not enough to permit the construction of a reasonably sized residence and garage, and it is impossible to conform with the 10,000 sq. ft. open space requirement because the lot area is

only 9,670 sq. ft. Therefore, some relief from the floor area ratio and open space requirements must be provided. It is felt, however, that the proposed residence is too large for the lot and would not be in keeping with other development in the area. As recommended, a total floor area of 2,400 sq. ft. is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot. A 2,400 sq. ft. residence will be in keeping with other development in the area and will not be detrimental to the surrounding neighborhood or contrary to the public interest.

The steep slopes on the property and the narrow lot width are also physical limitations. An offset variance to permit a new residence to be located 7 ft. from the side lot lines will not adversely affect the adjacent properties and is consistent with the offset variance granted on the similarly sized adjacent lot to the south. Without a road setback variance, extensive filling would be required to locate the residence and attached garage farther from the road. Further, a road setback variance, as recommended, will not interfere with the public's use of the road or be a safety hazard and will result in a residence with approximately the same road setback as was approved for a new residence to be constructed on the adjacent lot to the south. Finally, it is felt that it would not be in conformance with the purpose and intent of the Ordinance to permit the covered concrete block basement, which has a non-conforming shore setback and also exceeds the maximum permitted accessory building floor area ratio, to remain. Therefore, the approval of variances from the road setback, offset, floor area ratio, and open space requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:093 JO ANN KOCH

Mr. Schmidt

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the following changes:

Condition #1 shall be changed to read "Prior to the issuance of a zoning permit for the proposed boathouse, a Certified Survey Map including all of Tax Key Number DELT 0767.005 and Tax Key Number DELT 0767.005.001 must be prepared by a registered land surveyor, submitted to the Planning and Zoning Division staff and to the Town of Delafield for review and approval, and recorded in the Waukesha County Register of Deed's office. The Certified Survey Map must contain a restriction that the two parcels on the north and south sides of West Lakeside Dr. must remain in the same ownership until and unless a residence is constructed on the southern parcel, the boathouse is removed, or the southern parcel is sold to a contiguous property owner."

Condition #3 shall be changed to read "The boathouse must be at least 5 ft. from the Ordinary High Water Mark of Pewaukee Lake, as measured to the outer edge of the wall, with the overhang not to exceed 2 ft. in width, even if that results in a boathouse with a depth of less than 30 ft. The walls of the boathouse must be located no farther east, west or north than the walls of the existing foundation, with overhangs not to exceed 2 ft. in width."

The motion was seconded by Mr. Dwyer and carried with three yes votes. Mr. Ward and Mr. Bartholomew voted no.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a zoning permit for the proposed boathouse, a Certified Survey Map including all of Tax Key Number DELT 0767.005 and Tax Key Number DELT 0767.005.001 must be prepared by a registered land surveyor, submitted to the Planning and Zoning Division staff and to the Town of Delafield for review and approval, and recorded in the Waukesha County Register of Deed's office. The Certified Survey Map must contain a restriction that the two parcels on the north and south sides of West Lakeside Dr. must remain in the same ownership until and unless a residence is constructed on the southern parcel or the boathouse is removed.
2. If desired, the adjacent parcel to the north (Tax Key Number DELT 0767.024) may be included in the Certified Survey Map, but unless the barn is removed, that parcel must be combined with the lot containing the residence. If the parcel with the barn is combined with lot containing the residence, the existing shed must be removed or the petitioner must obtain approval from the Town of Delafield Plan Commission to have three accessory buildings on one lot.
3. The boathouse must be located at least 5 ft. from the west lot line and at least 5 ft. from the Ordinary High Water Mark of Pewaukee Lake, as measured to the outer edges of the walls, with overhangs not to exceed 2 ft. in width.
4. The east wall of the boathouse shall be no closer to the large oak tree than the east wall of the existing foundation.
5. If necessary to conform with the above conditions, the boathouse may be reduced in size, but in no case shall the boathouse be larger than 600 sq. ft.
6. The boathouse may not contain more than one story and its height shall not exceed 15 ft., as measured to the peak of the roof from the average grade surrounding the structure. The boathouse must have a garage-type door(s) facing the lake and it must be placed on a permanent foundation extending below the frost line.
7. Prior to the issuance of a zoning permit, a complete set of plans for the boathouse, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a zoning permit, a Plat of Survey showing the location of the existing foundation, the large oak tree to the east of the existing foundation, and the proposed boathouse, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. In order to verify that the proposed boathouse will be located at least 5 ft. from the Ordinary High Water Mark of Pewaukee Lake, in conformance with the shore setback requirement, the petitioner shall submit a request to the Wisconsin Department of Natural Resources for a Ordinary High Water Mark Determination and that Ordinary High Water Mark of Pewaukee Lake, as determined by the Wisconsin Department of Natural Resources, must be shown on the Plat of Survey required above.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Certified Survey Map, as required in recommended Condition No. 1, will ensure that the 20 ft. strip of land, which was previously transferred from the adjacent lot to the east, will be legally combined with the original 80 ft. wide parcel, as required by the 1976 Board of Adjustment decision. It would not be within the purpose and intent of the Ordinance to permit a boathouse to be constructed on a lot without a residence, unless that lot is tied to a lot with a residence, which will be accomplished by the recommended restriction on the Certified Survey Map. Granting an offset variance to permit the boathouse to be 5 ft. from the side lot line will minimize the area of land disturbance by allowing the boathouse to be located in the approximate area of an existing below-grade foundation, which is in the public interest. However, permitting a boathouse to be located only 3 ft. from the large oak tree, as requested, would endanger the large oak tree, which is not in the public interest. Requiring the east wall of the boathouse to be no closer to the large oak tree than the existing foundation, is not unnecessarily burdensome because, with the recommended offset variance, it will still permit the construction of a boathouse that is approximately 18 ft. wide. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance

OTHER ITEMS REQUIRING BOARD ACTION:

BA04:006 OKAUCHEE LIONS CLUB - Reconsideration of Decision

Mr. Tarmann

I move to deny the request for reconsideration of the decision of March 10, 2004, based on the letter from Atty. Deborah Price dated December 7, 2004.

The motion was seconded by Mr. Bartholomew. Mr. Tarmann and Mr. Bartholomew voted yes, Mr. Ward voted no, and Mr. Schmidt and Mr. Dwyer abstained because they were not in attendance when the decision was made. The motion failed. Mr. Ward then changed his vote to yes and the motion carried with three yes votes.

Note: The letter from Atty. Deborah Price is attached as Exhibit "A".

APPROVAL OF THE ATTENDANCE OF BOARD OF ADJUSTMENT MEMBERS AT A UW-EXTENSION ETN SEMINAR ON PLANNING AND ZONING TO BE HELD ON DECEMBER 16, 2004.

Mr. Tarmann

I move to authorize the attendance of Board of Adjustment members at the UW-Extension ETN Seminar on Planning and Zoning to be held on December 16, 2004.

The motion was seconded by Mr. Ward and carried unanimously.

DISCUSSION OF POLICIES AND PROCEDURES:

The Board decided that a special meeting should be scheduled after the first of the year to discuss policies and procedures with the Corporation Counsel staff.

ADJOURNMENT:

Mr. Schmidt *I make a motion to adjourn this meeting at 9:35 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment